

RECEIVED

DEC - 3 1999

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter Of)
)
Local Competition and Broadband Reporting) CC Docket No. 99-301
)

COMMENTS OF THE NATIONAL CABLE TELEVISION ASSOCIATION

Daniel L. Brenner
Neal M. Goldberg
David Nicoll

1724 Massachusetts Ave
Washington, DC 20036-1969
(202) 775-3664

Counsel for the
National Cable Television Association

December 3, 1999

No. of Copies rec'd 019
List ABCDE

TABLE OF CONTENTS

INTRODUCTION AND SUMMARY	1
I. THE CABLE INDUSTRY SUPPORTS A REASONABLE DATA COLLECTION PROCESS BY INDUSTRY PARTICIPANTS TO TRACK THE DEVELOPMENT OF LOCAL TELEPHONE AND BROADBAND SERVICES COMPETITION, BUT THE INSTANT PROPOSAL SHOULD BE MODIFIED	2
A. The Data Collection Proposal Should Be Modified to Minimize Filing Burdens	2
B. The Proposed Broadband Thresholds Would Result in Burdensome Data Collection Efforts	3
II. COMPANIES MEETING MINIMUM NATIONAL AND STATE SUBSCRIBER THRESHOLDS SHOULD REPORT NATIONAL AND STATE- BY-STATE DATA ON BROADBAND SERVICES ON AN ANNUAL BASIS	6
A. The National Reporting Threshold Should Be 5,000 Subscribers	7
B. The State-by-State Reporting Threshold Should Be 1,000 Subscribers	7
C. Broadband Service Providers Should Report Customer Levels Annually	8
D. The Commission Should Not Require Broadband Service Providers to Report Customer Counts in the Detail Proposed	9
III. THE LOCAL TELEPHONE THRESHOLDS FOR CABLE OPERATORS SHOULD BE 50,000 SUBSCRIBERS ON A NATIONAL BASIS AND 10,000 SUBSCRIBERS ON AN INDIVIDUAL STATE BASIS	9
IV. PARTIES SHOULD BE PERMITTED TO SUBMIT STATE-BY-STATE SUBSCRIBERSHIP DATA ON A CONFIDENTIAL BASIS	11
CONCLUSION	12

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter Of)	
)	
Local Competition and Broadband Reporting)	CC Docket No. 99-301
)	

COMMENTS OF THE NATIONAL CABLE TELEVISION ASSOCIATION

The National Cable Television Association (“NCTA”), by its attorneys, submits the following comments in response to the Commission’s Notice of Proposed Rulemaking (“Notice”) in the above-captioned proceeding.

NCTA is the principal trade association of the cable television industry. Its members provide video programming, broadband Internet access, telephony and other services to customers throughout the United States. As detailed in these comments, the cable industry supports the goals of the data reporting proposals advanced in the Notice. However, because a number of these proposals place unnecessary burdens on nascent broadband and telephony operations of cable operators, we propose alternative reporting requirements herein.

INTRODUCTION AND SUMMARY

NCTA supports the reasonable collection of data to track the development of competition in broadband services and local telephony. But the proposals set forth in the Notice should be modified to reduce the reporting burden for service providers.

NCTA proposes the following adjustments:

- The national threshold for reporting broadband subscribers should be 5,000 subscribers.
- The threshold for reporting individual state broadband subscribership should be 1,000 subscribers.

- Subscribership should be reported annually in concert with the Commission's Section 706 proceeding.
- The Commission should not require customer counts divided by the technology employed, the classifications of customers served as business or residential, or whether the service is one-way or two-way.
- The local telephone thresholds for cable operators should be 50,000 subscribers on a national basis and 10,000 subscribers on an individual state basis, once the national threshold is reached.
- Parties should be permitted to submit subscribership data, other than national subscribership data, on a confidential basis.

NCTA believes that these modifications will achieve the Commission's information-gathering goals, while at the same time not unduly burdening these competitive enterprises.

I. THE CABLE INDUSTRY SUPPORTS A REASONABLE DATA COLLECTION PROCESS BY INDUSTRY PARTICIPANTS TO TRACK THE DEVELOPMENT OF LOCAL TELEPHONE AND BROADBAND SERVICES COMPETITION, BUT THE INSTANT PROPOSAL SHOULD BE MODIFIED.

A. The Data Collection Proposal Should Be Modified to Minimize Filing Burdens

The Commission proposes to collect data periodically on the broadband and voice-grade services offered to residential and business customers. The Commission wishes to collect this information to accurately assess the development of local competition. The Commission further believes that this information collection program is necessary to avoid "one size fits all" regulation of local communications services, i.e., to enable it to apply appropriate regulations to service offerings depending upon the extent to which the services are subject to effective competition.

The Notice recognizes that the Commission should minimize filing burdens to the greatest extent possible and should specifically target its information requests to its particular needs. It notes, for example, that its proposal, if adopted, does not call for information regarding

investments, rates, revenues, earnings, traffic volumes or other aspects of operations. Rather, data is requested relating to the scope of the development of voice grade lines and the deployment of broadband services.

The cable industry supports reasonable reporting of data concerning the number of subscribers utilizing voice grade facilities and broadband services and recognizes that this information is needed to assist in the fulfillment of the Commission's regulatory responsibilities. As discussed below, a reporting process could prove particularly useful if it were conducted in association with the annual Section 706 proceedings to evaluate the deployment of broadband facilities.

But elements of the proposal advanced in the Notice, if adopted, will at this early stage of deployment, require too much information by too many providers on a too frequent basis. It will be particularly burdensome for smaller cable systems. An undue burden will also be imposed upon larger systems and the costs associated with compliance will not be justified when balanced against corresponding benefits.

B. The Proposed Broadband Thresholds Would Result in Burdensome Data Collection Efforts

The Notice proposes to require every company serving at least 1,000 broadband customers to report the number of its customers to the Commission quarterly and to do so on a state-by-state basis. It further calls for additional breakdowns based upon the ways in which customer lines are used. The collective effect of these requirements is to impose an undue burden on broadband providers of virtually every stripe.

In contrast to the proposed 50,000 minimum voice grade access lines (or subscriber) threshold for the collection of data on telephony services, the Notice tentatively proposes to subject a company to the broadband services reporting requirement whenever the number of its

customers reaches 1,000. The rationale for this low threshold is to capture broadband developments in rural as well as more populated areas and thereby to ensure that the reporting process does not “miss broadband developments by smaller entities.”¹

We agree that data regarding broadband deployment especially in rural areas will assist the Commission in its responsibilities. Indeed, the cable industry has submitted a variety of information in a variety of formats as part of the industry’s response to the Commission’s Section 706 Inquiry and other proceedings. We expect such voluntary reporting to continue. NCTA will use its best efforts to compile and gather such information from its member companies for use in Commission proceedings, as we have done in the past. But we are concerned, particularly for smaller systems, with requirements mandating the format and frequency of such reports.

The 1,000 broadband service subscriber threshold will impose a reporting requirement on a substantial number of cable companies. Assuming cable broadband penetration of five percent, every cable company with more than 20,000 subscribers will be subject to the data collection regulations.

The proposed reporting burden will be particularly onerous for MSOs operating in multiple states. The Notice contemplates the reporting of the number of each company’s customers on a state-by-state basis. So, for example, a company operating in eight states, with 20,000 total cable customers (e.g., 2500 subscribers in each system), and broadband penetration of 5 per cent, would serve 1,000 broadband customers and, as a result, would be subject to the reporting regulation. If the broadband customers are evenly distributed in each state, the company will report 125 broadband subscribers per state.

¹ Local Competition and Broadband Reporting, FCC 99-283, rel. Oct. 22, 1999, at para. 41 (“Notice”).

Market dynamics indicate that the number of broadband subscribers associated with individual systems will be distributed unevenly. An MSO reporting 1,000 broadband customers among eight systems may actually have several hundred subscribers in one operation and as few as several dozen in another system. This is particularly likely in the early stages of broadband deployment, where the start-up of individual operations not yet mature initially results in small numbers of customers in the first reporting period or where services are being provided to groups of customers in MDUs.

The effort to gather and report the required information based on the 1,000 broadband subscriber threshold would be burdensome for both large and small companies. Since the broadband service is not yet mature in any jurisdiction, the state figures would be expected to be volatile. Since many cable companies do not have established mechanisms for maintaining this information on a regular basis, they will be required to hire new personnel (or redirect existing personnel) for this task.

The burden faced by large and small operators will be further magnified if the Commission adopts its proposal to require state-by-state reporting of broadband service deployment on a quarterly basis. In support of this requirement, the Commission refers to Section 706 of the 1996 Telecommunications Act, which directed the Commission to investigate periodically the progress of broadband deployment. But Congress did not require the Commission to make new counts of the number of broadband customers of virtually every provider four times a year. Rather, the Commission, consistent with its stated intention to issue yearly reports under the authority of Section 706,² should request broadband deployment data annually contemporaneously with issuing its Notice commencing its annual Section 706 Inquiry.

² Report, CC Docket No. 98-146, FCC 99-5 (rel. Feb. 2, 1999) at para. 19.

In addition NCTA urges the Commission not to adopt its proposal to require providers to submit data on the basis of one-way versus full broadband facilities or other delivery subcategories. While a broad categorization of the type of facility used is appropriate, the gradations proposed in the Notice are not. The Commission has not explained its need for this level of detail (or the need for this level of detail on such a frequent basis), and these proposed breakdowns would further burden large and small providers of broadband services.

As indicated above, the broadband reporting requirements, and the thresholds at which they are triggered, will result in unnecessary burdens placed upon enterprises that are in the earliest stages of operation. The cable industry recognizes that the Commission has a responsibility to gather data necessary to perform its regulatory responsibilities, and has in numerous contexts voluntarily supplied such information (e.g., Video Competition report, Section 706 Inquiry). We would expect such voluntary efforts to continue. In the following section we suggest modifications to the proposals in the Notice which, we believe, will serve the Commission's goals in this proceeding without imposing undue burdens on nascent service providers.

II. COMPANIES MEETING MINIMUM NATIONAL AND STATE SUBSCRIBER THRESHOLDS SHOULD REPORT NATIONAL AND STATE-BY-STATE DATA ON BROADBAND SERVICES ON AN ANNUAL BASIS

NCTA recommends that the Commission require companies meeting the thresholds of national and state-by-state broadband subscribership outlined below to report to the FCC annually. The timing of the reporting process should be tied to the agency's annual Inquiry conducted pursuant to Section 706 in order to provide data that will be useful in that proceeding, and to promote greater efficiency by allowing companies to fulfill various reporting requirements at one time. But the Commission should not require reporting of subscribership levels in greater detail, because doing so would unnecessarily burden these new businesses.

A. The National Reporting Threshold Should Be 5,000 Subscribers

In order to minimize the cost and resources associated with reporting obligations, the Commission's rules should exempt very small operators and those in the earliest stages of development of their broadband services from a requirement to report the number of their broadband subscribers. Specifically, NCTA recommends that companies with fewer than 5,000 broadband customers nationally be exempted from mandatory reporting requirements. This exemption would recognize that companies with this level of broadband penetration are least likely to have the resources and personnel to meet the reporting requirements. The Commission has made similar allowances for smaller companies in analogous situations.³

A reporting threshold set at 5,000 broadband subscribers nationally strikes the appropriate balance. It enables the Commission to identify all providers of broadband services that have begun to offer service to a substantial number of customers. At the same time, it does not unduly burden companies in their early stages of operation.

B. The State-by-State Reporting Threshold Should Be 1,000 Subscribers

The Commission also proposes to collect information on the state of broadband deployment in individual states, once the nationwide broadband threshold is met. The collection of information at the state level will be a valuable supplement to the collection of national data, because it will enable the Commission to identify the specific individual locations at which broadband services are being deployed. However, the Commission should not require broadband reporting in jurisdictions where service development is below that threshold.

³ See, e.g., Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996, Report and Order, CS Docket No. 96-85, FCC 99-57, (rel. March 29, 1999) at ¶¶ 81-82 (small operator exemption from certain rate regulation procedures); Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, Eighth Order on Reconsideration, MM Docket Nos. 92-266, 93-215, (rel. Feb. 6, 1995) (Alternative rate regulation scheme for small operators); Sixth Report and Order and Eleventh Order on Reconsideration, FCC 95-196, (rel. Jun. 5, 1995) (Extending rate regulation and administrative relief to greater number of smaller cable systems).

The key issue is how to strike the appropriate balance. The proposal to require the submission of state-by-state data wherever a company serves a total of 1,000 or more customers could, in the extreme case, force a service provider to report only a few broadband service customers in one state, if it served 1,000 customers nationwide. Instead, an operator should be required to report the number of broadband customers on an individual state basis only when the demand for its service reaches the threshold of 1,000 subscribers in that particular state.

C. Broadband Service Providers Should Report Customer Levels Annually

As with any information collection requirement, the Commission must carefully weigh the agency's need for the information against the costs to reporting entities of compiling, organizing and submitting the information. The frequency of the information submissions is a key element in any assessment of the benefit/burden calculation. Imposing the proposed quarterly obligation will require companies, on a virtually continuous basis, to refocus resources to comply with monitoring obligations during this nascent phase of service implementation when firms should be focusing on quality installations and other customer-related activities.

The Commission instead should require broadband service providers to submit data annually. An annual requirement will give the Commission the information it needs on a sufficiently frequent basis to properly assess whether broadband services are being deployed on a reasonable and timely basis throughout the United States. An annual monitoring process will be particularly effective if it is timed to coincide with and to support the annual Section 706 review of broadband developments. Quarterly filings, in contrast, will generate significantly more data at considerable cost.

D. The Commission Should Not Require Broadband Service Providers to Report Customer Counts in the Detail Proposed

The Commission proposes to require broadband service providers subject to the reporting requirement to provide subscriber data subdivided into groups based upon the technology deployed to deliver the service, the classification of customers as business or residential, and whether the service is full broadband or “one-way.” Adoption of this approach is unnecessarily burdensome to service providers and will not offer information the Commission needs to make critical regulatory assessments

Sections IV and V of proposed FCC Form 477 list 136 – 136! – potential categories into which a reporting service provider is asked to subdivide its service offerings. While certain of these categories are mutually exclusive (e.g., satellite mobile and terrestrial wireless mobile), others will require more detailed analysis by the reporting entity. At the very least, a cable operator, for example, will be required to separate residential and business lines, up to T1 versus greater than T1 lines and one-way versus full broadband lines. Other broadband service providers will have similar obligations.

There is little justification for burdening nascent enterprises by requiring breakdowns of subscribers into detailed subcategories at the initial stages of a company’s broadband deployment. Until broadband services attain a greater degree of maturity, service providers should not be required to separate the number of customers on the basis of technology, business versus residential status, or service category.

III. THE LOCAL TELEPHONE THRESHOLDS FOR CABLE OPERATORS SHOULD BE 50,000 SUBSCRIBERS ON A NATIONAL BASIS AND 10,000 SUBSCRIBERS ON AN INDIVIDUAL STATE BASIS

The Notice also seeks comment on the threshold at which cable operators who provide competitive local exchange services become subject to a reporting requirement. While noting

that the proposed reporting threshold for LECs will be 50,000 local access lines, the Commission suggests a different approach for cable-affiliated CLECs because they “... typically describe their cable telephone service reach in terms of actual subscribers.”⁴ The Notice asks whether the appropriate threshold for these companies should therefore be 50,000 telephone subscribers. It inquires, in the alternative, whether to assess the demand for cable-provided telephony services on the basis of homes passed by these services.

The Commission should apply a threshold of 50,000 national telephony subscribers to trigger a reporting requirement for cable-affiliated CLECs. As the Notice acknowledges, it is the cable industry’s general practice to describe its number of customers in terms of actual subscribers. Moreover, the competitive environment faced by cable-affiliated CLECs, in which they compete with competitors for each customer, fully justifies the counting of customers on a subscriber-by-subscriber basis.

The use of alternative methods, in contrast, will not accurately measure the competitive impact of cable-affiliated CLECs on the telecommunications marketplace. A measurement mechanism based on homes passed, for example, will take account of the number of customers who have the option of cable-provided telephone service instead of the number who actually subscribe. If adopted, this approach will create a false impression of the competitive effectiveness of cable-affiliated CLEC services.

The Commission should also adopt 10,000 telephony subscribers in a single state as the threshold for state-by-state reporting of telephone subscribership by cable-affiliated CLECs for companies serving at least 50,000 subscribers nationwide. Until the critical mass of 10,000

⁴ Notice at para. 40.

subscribers within a state is reached, the business will be too small relative to ILEC and other CLEC competitors to justify state-by-state reporting.

IV. PARTIES SHOULD BE PERMITTED TO SUBMIT STATE-BY-STATE SUBSCRIBERSHIP DATA ON A CONFIDENTIAL BASIS

The Notice indicates a strong preference for making public all data submitted pursuant to the proposed reporting procedure. It argues that publication will facilitate the use of the data in Commission reports, and the availability of the data will promote general awareness of the development of competition. These considerations, the Commission observes, override concerns relating to the competitive sensitivity of the data.

The approach proposed in the Notice fails to account for the genuinely competitive harm that broadband and CLEC enterprises will encounter if the proposal advanced in the Notice is adopted. It is entirely reasonable to make public national subscriber data for companies meeting the national threshold. Publication of individual state data or, as suggested in the Notice, zip code or wire center data, is a very different matter. The competitive marketplace and small, competitive enterprises may suffer serious harm if this data is made available to the public.

In the most extreme scenario, the Commission proposes to make wire center or zip code-based data available for any broadband service provider with 1,000 customers in the country. But even if the state-by-state option is chosen, the result may be serious harm. A company with 1,000 customers in one state would be compelled to report data on even a small number of customers in other states. With this information in hand, a company's competitors might choose to target these particular markets depending upon the relative success of the first entrant at the expense of areas not yet served.


The Commission should not adopt a reporting procedure that has as its consequence, intended or unintended, the determination of areas where competitive rollout of services occurs.

The required information should describe where broadband is deployed, not influence marketplace decisions about where it should be deployed. Permitting the filing of state-by-state data on a confidential basis will protect against the improper use of customer data for competitive purposes.

CONCLUSION

For the foregoing reasons, the Commission should adopt reporting procedures consistent with the positions described herein.

Respectfully Submitted,



Daniel L. Brenner
Neal M. Goldberg
David Nicoll

1724 Massachusetts Ave
Washington, DC 20036-1969
(202) 775-3664

Counsel for the
National Cable Television Association

December 3, 1999

CERTIFICATE OF SERVICE

I, Gretchen M. Lohmann, hereby certify that on the 3rd day of December, 1999, I caused copies of the foregoing "Comments of the National Cable Television Association," to be served by hand delivery to the following:

Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, SW; Room TW-A325
Washington, D.C. 20554

ITS
The Portals
445 12th Street, SW
Room CY-B402
Washington, D.C. 20554


Gretchen M. Lohmann